S.B. Cr. Misc. Petition NO.200/2007

Rajendra Tak
Vs.
Smt. Pinky & Ors.

Date of Order :: 12-07-2007

HON'BLE MR. JUSTICE H.R.PANWAR

Shri G.R. Punia, for the petitioner.
Shri D.S. Sodha, for
Shri Kuldeep Mathur, for the respondents.

By the instant petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 19.1.2007 passed by the Chief Judicial Magistrate, Pali (for short, 'the trial court') whereby the trial court allowed the application filed by the non-petitioners who are the wife, son and daughter of the petitioner Rajendra Tak seeking interim maintenance allowance. The trial court granted interim maintenance allowance @ Rs.1000/- per month in favour of the wife and @ Rs.500/- per month each, in favour of son and the daughter.

Heard counsel for the parties.

It is contended by learned counsel for the petitioner that petitioner Rajendra Tak is a person of unsound mind and is unable to pay the maintenance. Learned counsel submits that petitioner being a person of unsound mind, even is unable to maintain himself. Learned counsel for the

respondents submits that such a plea was also taken by the petitioner before the trial Court whereupon the petitioner was called by the trial court and the trial court after satisfied from the brief enquiry, came to the conclusion that the petitioner is not a man of unsound mind.

Be that as it may, this is an award by way of interim maintenance and the question as to whether the petitioner is a man of unsound mind has to be decided on the basis of the evidence to be led by the parties.

Learned counsel for the petitioner submits that matter is fixed for evidence and in this view of the matter, it would be more appropriate if the trial court is directed to decide the main application under Section 125 Cr.P.C. expeditiously, so that the issue as to whether the petitioner is a man of unsound mind or not can be decided by the trial court. So far as interim maintenance is concerned, as the trial court vide order dated 19.1.2007 prima facie held that the petitioner is not a man of unsound mind, therefore in my view, the impugned order does not call for interference.

The petition is therefore dismissed. However the trial court is directed to take up the matter on priority basis and allow the parties to

lead their evidence and conclude the matter, preferably within three months from the date of receipt of a certified copy of this order. However, it will be open to the petitioner to lead the evidence before the trial court with regard to his being a man of unsound mind.

[H.R.PANWAR],J.

Praveen